

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHAWN DANIEL HABENER,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

CASE NO. C13-5561 BHS

ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND MOTION TO APPOINT
COUNSEL, AND DISMISSING
COMPLAINT

This matter comes before the Court on Plaintiff Shawn Daniel Habener's ("Habener") motion to proceed *in forma pauperis* (Dkt. 1), proposed complaint (Dkt. 1-1), and motion to appoint counsel (Dkt. 2).

On July 11, 2013, Habener filed the instant motion and proposed complaint alleging that multiple government agencies have used unlawful practices to destroy his past profession. Dkt. 1-1.

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the "privilege of pleading *in forma pauperis* . . . in civil actions for damages should be

1 allowed only in exceptional circumstances.” *Wilborn v. Escalderon*, 789 F.2d 1328 (9th
2 Cir. 1986). Moreover, the court has broad discretion in denying an application to proceed
3 *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375
4 U.S. 845 (1963).

5 A federal court may dismiss *sua sponte* pursuant to Fed. R. Civ. P. 12(b)(6) when
6 it is clear that the plaintiff has not stated a claim upon which relief may be granted. *See*
7 *Omar v. Sea Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (“A trial court may
8 dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6) Such a dismissal may be
9 made without notice where the claimant cannot possibly win relief.”). *See also* *Mallard*
10 *v. United States Dist. Court*, 490 U.S. 296, 307 (1989) (there is little doubt a federal court
11 would have the power to dismiss a frivolous complaint *sua sponte*, even in absence of an
12 express statutory provision). A complaint is frivolous when it has no arguable basis in
13 law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

14 In this case, Habener’s complaint is frivolous and has no arguable basis in law or
15 fact. He fails to name any of the allegedly undercover agents that ridiculed him for the
16 last three years, and his alleged damages are destruction of an unspecified “former
17 profession.” Moreover, Habener fails to allege sufficient facts or law to establish
18 jurisdiction in this Court. Therefore, the Court **DENIES** his motion to proceed *in forma*
19 *pauperis* (Dkt. 1) and **DISMISSES** his proposed complaint. The motion to appoint
20 counsel is denied as moot.
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1 **IT IS SO ORDERED.**

2 Dated this 17th day of July, 2013.

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5 BENJAMIN H. SETTLE
6 United States District Judge
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